IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9248 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAMBUSAR NAGARPALIKA KAMDAR MANDAL THRO.VICE PRESIDENT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9248 of 2002

MR MUKESH R SHAH for Petitioner No. 1-5

MR RV DESAI, AGP for Respondent No. 1-3

..... for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/10/2002

ORAL JUDGEMENT

Rule. With the consent of the learned counsel for the parties, the petition is taken up for final disposal today.

2. This petition is filed on behalf of the employees of the Jambusar Municipality for challenging the apprehended action of the Chief Officer of the Municipality for discontinuing the payment of salaries to the employees of the Municipality in the 5th Pay Commission pay-scales.

3. The Director of Municipalities had by order dated 12.5.1999 directed the Jambusar Municipality to pay salaries to its employees in the 5th Pay Commission pay-scales subject to certain conditions including the condition that the salary bill shall not exceed 45% of the income of the Municipality and that the Municipality shall keep 10% of the sanctioned posts vacant. Thereafter, the Director issued general circular dated 23.7.2002 calling upon the Chief Officers of all the Municipalities to place all the details about the income and expenditure of the concerned Municipalities including the salary bill for the employees on the sanctioned set up as well as the wages to the daily wagers and other employees. The Director further instructed through the said circular that where more than 45% of the income was being spent on the staff bill, the Municipalities shall stop paying the salaries in the 5th Pay Commission pay-scales, failing which the responsibility will be fixed on the concerned chief officers.

4. In view of the above circular dated 23.7.2002, apprehending that the Chief Officer, Jambusar Municipality may direct the office of the Municipality to pay the salaries to the employees in the 4th Pay Commission pay-scales, the petitioners have approached this Court.

5. In response to the notice issued by this Court, affidavit in reply has been filed by Mr MT Patel, Chief Officer of the Municipality stating, inter alia, that the salary expenses of the regular staff are Rs.62 lacs (rounded off) which comes to about 35% and the salary expenses of the daily wager staff (non-sanctioned) are about Rs. 10.28 lacs (rounded off) and that the total salary bill of all the employees including daily wagers comes to 41.02% of the income of the Municipality. It is further stated that this percentage is worked out by including the octroi grant and salary grant as the revenue income of the Municipality which accordingly works out to Rs.1.76 Crores (rounded off).

6. In view of the decision dated 3.10.2002 of this Court in Special Civil Application No. 8434 of 2002, the

grant-in-aid octroi as well as the salary grant are required to be included in the revenue income of the Municipality for the purpose of applying 45% limit in the matter of payment of salaries in the 5th Pay Commission pay-scales. It prima facie appears from the affidavit of the Chief Officer of the Municipality that the payment of salaries to the employees of the Jambusar Municipality in the 5th Pay Commission pay-scale does not amount to contravention of the conditions imposed by the Director of Municipalities while sanctioning payment of salaries in the 5th Pay Commission pay-scales as per the original order dated 12.5.1999. However, since this matter is required to be considered by the Director, and after verification of all the figures, the Director is to take the final decision, it is directed that, within one month from today, the Chief Officer of the Municipality shall place all the relevant details about the income and expenses of the Municipality for the last three years.

Till then the Jambusar Municipality shall continue to pay salaries to its employees in the 5th Pay Commission pay-scales subject to the condition that in any case the salary bill shall not exceed 45% of the revenue income of the Municipality.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-